
(2018) 04 UK CK 0067

In the Uttarakhand High Court

Case No : Special Appeal No. 193, 199, 293 of 2018, CLMA No.3967 Of 2018

JAINAND PRASAD TYAGI

APPELLANT

Vs

STATE OF UTTARAKHAND AND OTHERS

RESPONDENT

Date of Decision : 18-04-2018

Acts Referred:

Citation : (2018) 04 UK CK 0067

Hon'ble Judges : K.M. JOSEPH, C.J, SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : S.S. Yadav, Pradeep Joshi

Final Decision : Disposed Off

Judgement

K.M. JOSEPH, C.J.Â Â Â Â Â Â Â

1. Having heard the learned counsel for the appellant and the learned Standing Counsel for the State, the delay in all these cases is condoned. Delay

condonation applications will stand allowed.

2. Since common questions arise in all these appeals, we are disposing of the same by this common judgment.

3. Special Appeal No. 193/2018 is directed against the judgment passed in Writ Petition (S/S) no. 979/2015.Â Special Appeal No. 293/2017 is filed

against the judgment passed in Writ Petition (S/S) no. 776/2010 and Special Appeal No. 199/2018 is filed against the judgment passed in Writ Petition

(M/S) no. 2146/2016.Â

4. In all these cases, the appellants are the writ petitioners. The relief sought in Writ Petition (S/S) No. 776/2010 is as follows:

â??Issue a writ, order or direction in the nature of mandamus directing the respondent no. 2 to release the pensionary benefit of the petitioner in the

tune of the order dated 13/05/2010 passed by this Honâ??ble Court.â??

5. In Writ Petition (S/S) No. 979/2015, the reliefs sought are as follows:

â??(i)Â Issue a writ, order or direction in the nature of directing the respondent nos. 3 & 4 to release the due amount of earned leave of 300 days

and arrears of pay of 6th Pay Commission since 01.01.2006 to 31.07.2008 (date of retirement of the petitioner) within 15 days. As a result, the

petitioner can arrange the marriage of his daughter.

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 3 & 4 to release the amount about Rs. 3/- lacs with 18

interest or as admissible on the facts of the case.

(iii) Issue a writ, order or direction in the nature of mandamus directing the respondent nos. 3 & 4 to take quick decision in the present case of the

petitioner because the petitioner is going to be solemnized the marriage of his daughter in the month of July, 2015 on the basis of payment of due

amount he will be able to arrange the marriage otherwise marriage will be postponed for the next year and further prayed to direct the respondent nos.

2, 3 & 4 to sanction the loan to the petitioner in case they are facing some difficulties for the calculation and measurement of length of service,

increment and other officials formalities within a week in favour of the petitioner.â??

6. Finally, in Writ Petition (M/S) No. 2146/2016, the reliefs sought by the petitioners are as follows:

â??(i)Â Issue writ, order or direction in the nature of certiorari quashing the notice dated 22.07/2016.

Â (ii) Issue a writ, order or direction in the nature of mandamus directing the respondent to maintain the status of vacating proceeding of quarter no.

B-247 of Lakhwad Colony Dakpathar, DehradunÂ till the final payment of dues amount of the petitioner which due on the respondent nos. 2, 3 &

4.â??

7. Following is the common judgment rendered by the learned Single Judge, which is impugned in all these appeals :

1. All the above three petitions have been filed by the same petitioners. In WPMS No. 2146 of 2016 the petitioner seeks a direction of this Court to

quash the notice dated 22.07.2016 which has been served to him for vacating Government accommodation occupied by him unauthorizedly, as alleged

in the notice. As far as WPSS Nos. 776 of 2010 and 979 of 2015 are concerned, the petitioner is seeking benefits of 6th Pay Commission as well as

pensionary benefits, after his retirement from service after he had reached the age of superannuation on 31.07.2008.Â

2. The petitioner was initially appointed as Work Supervisor in the year 1971 in the Irrigation Department but his services were regularized on

12.06.2008 and he reached the age of superannuation and retired from service on 31.07.2008. According to the petitioner certain dues like benefit of

6th Pay Commission, leave encashment, gratuity and other pensionary benefits have not been given to him till date though he had retired in the year

2008.Â

3. It is an admitted fact that the petitioner reached the age of superannuation and retired from service way back in the year 2008 and till date he is

occupying the Government accommodation, which is also admittedly unauthorized, therefore, this Court is of the considered view that the petitioner is

an unauthorized occupant in the accommodation in question. This Court finds no anomaly to interfere in the impugned order dated 22.07.2016 passed

by the respondents by which he has been directed to vacate the premises in question.Â

4. Accordingly, the writ petition (M/S) No.2146 of 2016 stands dismissed.Â

5. As far as the grievance of the petitioner in other connected writ petitions (WPSS Nos. 776 of 2010 and 979 of 2015) is concerned, the petitioner

shall produce the proof to this effect that he has left the possession of the Government accommodation and while he submits the same before the

authority concerned along with fresh representation, the authority concerned shall decide the representation of the petitioner, in accordance with law,

as expeditiously as possible preferably within a period of three weeks from the date of submission of such representation.Â

6. Consequently, the writ petitions (WPSS Nos. 776 of 2010 and 979 of 2015) stand disposed.Â

8. We heard Mr. S.S. Yadav, learned counsel for the appellants. We also heard Mr. Pradeep Joshi learned Standing Counsel for the

State/respondents.

9. In brief, the situation can be summarized as follows:

The appellant has retired as Work Supervisor from the Irrigation Department on

31.07.2008. He was given official accommodation. He has not vacated the official accommodation despite superannuation. It is accordingly that he was served with the notice which is impugned in Writ Petition (M/S) No. 2146/2016.

In the other two writ petitions, as can be seen from the reliefs sought, the complaint appears to be regarding the non-payment of retiral benefits due to him. Apparently, the case of the appellant is that he is being denied the retiral benefits and, as long as, the retiral benefits are not being paid to him, he should be allowed to continue in the official accommodation. He would submit that the moment the retiral benefits are paid to him, he is prepared to vacate the official accommodation.

The learned Single Judge, as we have noted, has directed that if the appellant produce the proof that he has vacated the accommodation, his representation filed for disbursement of retiral benefits will be decided.

10. The learned Standing Counsel, on instructions, submits that the Department has not paid the amount and in terms of the directions of the learned Single Judge they will dispose of the representation, provided the appellant vacates the accommodation.

11. Taking the contentions of Writ Petition No. 2146 of 2016, the question arises whether the appellant has a legal right to continue in the official accommodation after retiring on the basis that retiral benefits are not being paid to him. We are of the clear view that the appellant may not have any legal right to continue in the official accommodation on the basis that the retiral benefits are being withheld.

12. The next question would be whether the respondents were also justified in withholding the retiral benefits. Though the appellant retired in the year 2008, no ground is brought to our notice, namely, pendency of any disciplinary proceeding or otherwise any other proceedings, so as to justify the non-payment of the legally due retiral benefits to the appellant.

13. In such circumstances, we are of the view that there must be a positive direction to the respondents to pay the amounts legally due to the petitioners by way of retiral benefits within a specified time, but this is also subject to the condition that the appellant will vacate the premises within a particular time.

14. Having heard the learned counsel for the parties in modification of the judgment of the learned Single Judge, we dispose of the appeals as follows:

If the appellant vacates and surrenders peaceful possession to the respondent within a period of 15 days from today then the respondent no. 2 will

disburse the entire amount due by way of retiral benefits to the petitioner, which is subject matter of Writ Petition Nos. 776/2010 & 979/2015 within a period of one month from the date on which he vacates.

15. There would be no order as to cost.

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